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Supreme Court, U.S.
FILED

(1)

No. 93 1659 APR 21 1994

OFFICE OF THE CLERK

In the Supreme Court of the United States

October Term, 1993

JAMES SCOTT CAMPBELL,

Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Counsel for Petitioner
JAMES SCOTT CAMPBELL

32 pp

QUESTION PRESENTED

Is petitioner who continues to suffer from significant collateral consequences[1] of a state criminal conviction obtained in violation of the United States Constitution precluded from obtaining federal relief because his "custody" status under 28 U.S.C. §2254(a) was terminated for good conduct while he was exhausting his state remedies pursuant to the mandate of 28 U.S.C. §2254 (b) and (c) ?

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[1] Among these collateral consequences are the exclusion from service as a juror in state and federal prosecutions, the prohibition from engaging in certain licensed businesses and professions, and the right to own or possess firearms.

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No. _____

In the Supreme Court of the United States

October Term, 1993

JAMES SCOTT CAMPBELL

Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Petitioner JAMES SCOTT CAMPBELL, through his attorney, MARK E. OVERLAND, respectfully prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the Ninth Circuit, filed on February 25, 1994, denying petitioner's application for a certificate of probable cause pursuant to 28 U.S.C. §2253 to review the denial of petitioner's petition for habeas corpus by the District Court of the Central District of California.

ORDERS BELOW

On February 25, 1994, The United States Court of Appeals for the Ninth Circuit denied petitioner's application for a certificate of probable cause pursuant to the provisions of 28 U.S.C. §2253, following the denial of petitioner's petition for habeas corpus in the District Court for the Central District of California.

The unpublished order denying the certificate of probable cause is reproduced at Appendix A to this petition. The December 15, 1993 order of the District Court denying the certificate of probable cause is attached hereto as Appendix B. The November 15, 1993 Judgment of the District Court dismissing petitioner's petition for writ of habeas corpus, together with the Order Adopting Findings, Conclusions and Recommendations of United States Magistrate Judge, and the Final Report and Recommendation of United States Magistrate Judge, are attached hereto as Appendix C. The June 30, 1993 Order Denying Writ of Habeas Corpus of the California Supreme Court is attached as Appendix D.

JURISDICTION

This court has jurisdiction pursuant to 28 U.S.C. 1254 (1). The petition is timely according to Supreme Court Rule 13.1.

STATUTES AND REGULATIONS INVOLVED

Article I, § 9, cl. 2 of the United States Constitution provides:

> "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

28 U.S.C. §2254 provides in pertinent part:

> "(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.
>
> "(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of

> available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.
>
> "(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented. . . . ."

28 U.S.C. §2253 provides in pertinent part:

> ". . . An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of arises out of process issued by a State court, unless the justice or judge who rendered the order or a circuit justice or judge issues a certificate of probable cause.

California Penal Code § 3000 provides, in pertinent part:

> "(a) At the expiration of a term of imprisonment . . . . the inmate shall be

released on parole for a period not exceeding three years, unless the parole authority for good cause waives parole and discharges the inmate from custody of the department."

STATEMENT OF THE CASE

On May 22, 1989 petitioner was convicted of a violation of California Penal Code §487.1 (grand theft) in the Superior Court of Orange County in People of the State of California vs. James Scott Campbell, No. C-71319. Thereafter, on November 2, 1990, judgment was imposed, sentencing petitioner to state prison for a term of four years.

Petitioner, while serving his state sentence, filed a pro se petition for writ of habeas corpus in state court to augment the pending appeal from the November 2, 1990 judgment. Petitioner was released from prison custody on May 1, 1992. He received an early parole discharge for good conduct on April 30, 1993 while he was diligently exhausting his state remedies by preparing and filing a petition for writ of habeas corpus in the California Supreme Court after denials of his appeal and his pro se petition for writ of habeas corpus by the California Court of Appeal. But for this action on the part of the parole authorities, petitioner's discharge date

would have been on May 1, 1995, three years after his release from prison. (Calif. Pen. Code §3000.)

Petitioner's state remedies were not exhausted until after June 30, 1993, when the California Supreme Court denied his petition for writ of habeas corpus. Petitioner filed his federal petition for writ of habeas corpus on September 24, 1993. On November 16, 1993, the district court, without addressing the merits of the petition, entered its judgment dismissing the petition on the ground that petitioner had not satisfied the "custody" requirement of 28 U.S.C. §2254(a). On February 25, 1994, the United States Court of Appeals for the Ninth Circuit issued its Order (hereafter, "Order") denying the request for a certificate of probable cause.

REASONS FOR GRANTING WRIT

This petition raises important and fundamental questions concerning the construction of 28 U.S.C. §2254 (a), (b), and (c). The Order of the Court of Appeals effectively denies petitioner and others similarly situated a federal forum in which they may challenge a criminal conviction obtained in violation of federal constitutional guarantees. A federal petition for writ of habeas corpus filed prior to the exhaustion of state remedies must be dismissed pursuant to 28 U.S.C. §2254 (b) and (c). A federal petition filed after the exhaustion of state remedies must be dismissed pursuant to 28 U.S.C.

§2254(a), since petitioner's "custody" status expired while he was exhausting his state remedies in compliance with 28 U.S.C. §2254 (b) and (c). In addition, the Order of the Court of Appeals could have a significant impact on the administration of the law. The effect of this Order may require petitioners to file federal petitions for habeas corpus while state remedies are being exhausted, in order to avoid termination of their "custody" status prior to such exhaustion. This will result in an increase in the workload of district courts which must consider federal petitions which could later be moot if the state courts grant relief.

I. THIS COURT SHOULD GRANT REVIEW IN ORDER TO DETERMINE WHETHER A FEDERAL FORUM IS AVAILABLE TO VINDICATE THE FEDERAL CONSTITUTIONAL GUARANTEES OF INMATES WHOSE CUSTODY STATUS EXPIRES WHILE THEY EXHAUST THEIR FEDERALLY MANDATED STATE REMEDIES.

This Court has recently emphasized the requirement that a federal habeas petitioner be in custody at the time of the filing of a petition in order to satisfy the jurisdictional basis of the federal habeas statute. Maleng v. Cook, 490 U.S. 488 (1989). At the same time, this Court reaffirmed its prior holdings that

the "in custody" language of 28 U.S.C. §2241 ff. does not require that "a prisoner be physically confined in order to challenge his sentence on habeas corpus." Maleng v. Cook, supra, at p. 491. This Court in Maleng specifically recognized that collateral consequences such as the ones suffered by petitioner in this case are sufficient to invoke the district court's habeas jurisdiction so long as a petition for habeas is filed during the time that petitioner is in custody. Maleng v. Cook, supra, at pp. 491-492. Once such a petition has been filed, the expiration of petitioner's sentence before the petition is finally adjudicated pending appellate review does not render the petition moot. Carafas v. LaValle, 391 U.S. 234, 238 (1968).

With respect to the exhaustion requirement of 28 U.S.C. §2254 (b) and (c), this Court as well as circuit courts have consistently held that the presentation of unexhausted claims in a federal petition for habeas corpus requires dismissal of the petition. Rose v. Lundy, 455 U.S. 509 (1982); Wickstrom v. Schardt, 798 F.2d 268, 269 (7th Cir. 1986); Leonard v. Hamilton, 804 F.2d 838, 843 (5th Cir. 1986).

CONCLUSION

Petitioner in this action could not have filed a viable habeas petition in the district court until after he

exhausted his state remedies. Prior to exhausting his state remedies, his "custody" status expired because of his good behavior on parole. Accordingly, petitioner's compliance with the exhaustion requirement of 28 U.S.C. §2254(b) and (c) should not be utilized to preclude habeas relief based on the custody requirement of 28 U.S.C. §2254(a). The Order of the Court of Appeals effectively forecloses federal review of the substantial federal issues raised by petitioner's challenged conviction. A filing in federal court prior to release from "custody" would be subject to dismissal for failure to exhaust state remedies; a filing after state remedies were exhausted would be, as the courts determined in this case, subject to dismissal because the petitioner was no longer in "custody."[2]

This Court should grant a writ of certiorari and review the insurmountable barriers to federal habeas

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[2] Petitioner's suggested resolution of the tension between 28 U.S.C. §2254(a), on the one hand, and 28 U.S.C. §2254 (b) and (c), on the other, is especially appropriate in the instant case because petitioner filed his state court habeas petitions in pro se. Petitioner should be judged by "less stringent" standards at the time of that filing. (See, Haines v. Kerner, 404 U.S. 519, 520 (1972).

Finally, petitioner would have been in custody after his state remedies were exhausted except for his early termination of parole. Petitioner should not be penalized for his good behavior.

jurisdiction created by the Order of the Court of Appeals.

Respectfully submitted,

MARK E. OVERLAND
Counsel for petitioner
JAMES SCOTT CAMPBELL

APPENDIX A

FILED
FEB 25 1994
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES SCOTT CAMPBELL,	)	No. 94-55116
	)	
Petitioner,	)	D.C. No. CV-93-5762-MRP
vs.	)	Central California
PEOPLE OF THE STATE OF CALIFORNIA,	)	ORDER
	)	
Respondent	)	
	)	

Before: SCHROEDER and WIGGINS, Circuit Judges

The request for a certificate of probable cause is denied.

APPENDIX A

APPENDIX B

FILED
DEC 15 1993
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JAMES SCOTT CAMPBELL,	)	No.CV. 93-5762-MRP(JR)
Petitioner,	)	
	)	ORDER
vs.	)	DENYING
	)	CERTIFICATE
PEOPLE OF THE STATE OF CA.,	)	OF
	)	PROBABLE
	)	CAUSE
Respondent.	)	
	)	

Pursuant to 28 U.S.C.§636 and 28 U.S.C. §2253, the Court has reviewed the notice of appeal, the Report and Recommendation of the United States Magistrate Judge and finds that the proposed appeal from the Judgment of Court entered on November 16,1 993,denying the petition is frivolous and does not have merit.

Pursuant to 28 U.S.C.§1915(a), this Court certifies that the appeal is not taken in good faith.

IT IS HEREBY ORDERED that the motion for certificate of probable cause is DENIED.

Dated: December 14, 1993

/s/
MARIANA R. PFAELZER

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d)

APPENDIX C

LODGED
NOV 9 1993
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FILED
NOV 15 1993

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JAMES SCOTT CAMPBELL,	)	No.CV. 93-5762-MRP(JR)
Petitioner,	)	
	)	JUDGMENT
vs.	)	
	)	
PEOPLE OF THE STATE OF CALIFORNIA,	)	
Respondent.	)	
	)	

IT IS ADJUDGED that the petition is dismissed.

DATED: November 12, 1993

/s/
MARIANA R. PFAELZER

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d)

C4

FILED
NOV 15 1993

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JAMES SCOTT CAMPBELL, Petitioner, vs. PEOPLE OF THE STATE OF CALIFORNIA, Respondent.	No.CV. 93-5762-MRP(JR) ORDER ADOPTING FINDINGS, CONCLUSION AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. §636(b)(1)(B), the Court has reviewed the pleadings, objections, and all papers herein, and adopts the findings, conclusions and recommendations of the United States Magistrate Judge.

IT IS ORDERED that Judgment be entered dismissing the petition.

APPENDIX C

IT IS FURTHER ORDERED that the Clerk shall serve copies of this Order, the Report and Recommendation, and the Judgment by United States mail on the petitioner and respondent.

DATED: November 12, 1993

/s/
MARIANA R. PFAELZER

FILED
NOV 15 1993

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JAMES SCOTT CAMPBELL,	)	No.CV. 93-5762-MRP(JR)
Petitioner,	)	
vs.	)	FINAL REPORT AND RECOMMENDATIONS
PEOPLE OF THE STATE OF CALIFORNIA,	)	
Respondent.	)	

This Final Report and Recommendation and the attached Report and Recommendation are submitted to the Honorable Mariana R. Pfaelzer, United States District Judge, pursuant to the provisions of 28 U.S.C.636(b)(1)(B) and General Order 194 of the United States District Court for the Central District of California.

On November 9, 1993, the Clerk filed a Notice of Filing of Magistrate Judge's Report and Recommendation and Lodging of Proposed Judgment, which was served on the parties, together with copies

of the Magistrate Judge's Report and Recommendation.

Objections were filed on November 12,1993.

IT IS THEREFORE RECOMMENDED that this Court issue an Order approving and adopting the Report and Recommendation and directing that Judgment be entered dismissing the petition.

DATED: November 12, 1993

/s/
JOSEPH REICHMANN
United States Magistrate Judge

C8

FILED
NOV 15 1993

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JAMES SCOTT CAMPBELL,	)	No.CV. 93-5762-MRP(JR)
Petitioner,	)	
vs.	)	REPORT AND RECOMMENDATION OF A WRIT OF HABEAS CORPUS BY A STATE PRISONER
PEOPLE OF THE STATE OF CALIFORNIA,	)	
Respondent.	)	

This Report and Recommendation is submitted to the Honorable Mariana R. Pfaelzer, United States District Court Judge, pursuant to the provisions of 28 U.S.C.Section 636 and Order 194 of the United States District Court for the Central District of California.

I. BACKGROUND

Petitioner pleaded guilty to a charge of grand theft under California Penal Code 487.1 on May 22, 1989. As a result, petitioner was sentenced to four years to state prison. Petitioner filed a writ of habeas

corpus claiming ineffective counsel, trial court's abuse of discretion in denying the motion to withdraw the guilty plea, and misconduct by the prosecutor which affected the plea bargain. The petition for writ of habeas corpus was denied by the California Supreme Court on June 30, 1993.

Petitioner, after having served his sentence was discharged from parole on May 1, 1993.

Petitioner, on September 24, 1993 filed for a writ of habeas corpus claiming the same allegations that were denied by the California Supreme Court on June 30, 1993. Having exhausted his state court remedies this writ of habeas corpus comes before this Court.

II. DISCUSSION

The issue in front of this Court is when does a federal habeas status give the United States district courts jurisdiction to entertain petitions for habeas relief. Section 28 U.S.C. 2254(a)(1993) states that a "district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody." In addition, Section 28 U.S.C.2241(c)(3) states that in order to entertain petitions for habeas corpus petitioner must be "in

custody in violation of the Constitution or laws or treaties of the United States."

The obvious question is does petitioner meet the "in custody" requirement? In Maleng v. Cook, 490 U.S. 488, 490 the court stated that it had never held that a habeas petitioner may be "in custody" under a conviction when the sentence imposed for that conviction has fully expired at the time his petition is filed. The court went on to state that "once the sentence imposed for a conviction has completely expired, the collateral consequences of that conviction are not themselves sufficient to render an individual "in custody" for the purposes of a habeas attack upon it."Id.

Petitioner was discharged from parole on May 1, 1993 and on September 24, 1993 petitioner filed a habeas wit. Therefore it is clear that petitioner did not satisfy the "in custody" requirement.

III. CONCLUSION

IT IS THEREFORE RECOMMENDED that this federal court issue an Order dismissing petitioner's petition for a writ of habeas corpus.

DATED: November 9, 1993

/s/
JOSEPH REICHMANN
United States Magistrate Judge

APPENDIX C

APPENDIX D

ORDER DENYING WRIT OF HABEAS CORPUS

No. S032612

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

SUPREME COURT
FILED
JUN 30 1993
Robert Wandruff, Clerk

Deputy

IN RE JAMES SCOTT CAMPBELL

ON

HABEAS CORPUS

Petition for writ of habeas corpus DENIED.

/s/ LUCAS
Chief Justice